



October 30, 2003

**Docket No. NHTSA-03-14810; Notice 1**

Docket Management  
Room PL-401  
400 Seventh Street, S.W.  
Washington, D.C. 20590

**Evenflo Company, Inc.; Receipt of Application  
for Decision of Inconsequential Noncompliance  
68 FR 56375, September 30, 2003**

Advocates for Highway and Auto Safety (Advocates) files these comments with regard to the application of the Evenflo Company, Inc. (Evenflo), for exemption from the notification and remedy requirements of the Motor Vehicle Safety Act on the basis that the noncompliance is inconsequential to motor vehicle safety. According to the notice published by the National Highway Traffic Safety Administration (NHTSA), from June 15, 2002 and January 30, 2003, a supplier to Evenflo produced approximately 742,736 child restraints and 633 accessory tether hook kits of which between 70 and 80 percent exceed the required specifications for tether hooks. 68 FR 56375 (September 30, 2003). Advocates files these comments because the safety of children and child restraints is a very important issue and because according to Evenflo's data noncompliance could affect over one half million child restraints.<sup>1</sup>

The NHTSA notice states that the tether hooks, required to connect the Evenflo child restraints to vehicle anchorages, do not comply with the specifications contained in paragraph S.5.9(b) of Federal Motor Vehicle Safety Standard No. 213, *Child Restraint Systems*. The noncompliant tether hooks were manufactured slightly larger than the 20 millimeters (mm) specified in the standard, measuring between 20.11 and 20.39 mm. Evenflo conducted approximately 100 sled tests with child restraints equipped with the noncompliant hooks, testing that revealed no adverse dynamic performance. *Id.* Finally, the NHTSA's notice also recounted the fact that Evenflo had two test engineers test two of the largest, and therefore supposedly most noncompliant, tether hooks, measuring 20.38 mm and 20.30 mm, in 207 different vehicle models to determine whether the noncompliant tether hooks would attach to the in-vehicle tether anchorages. A reported 586 separate attachment test points were tested. The notice quotes Evenflo as concluding that "[i]n every one of the 586 unique installation points the non-conforming tethers properly attached to the vehicle's tether attachment point." *Id.*

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<sup>1</sup> Crediting the accuracy of Evenflo's figures as reported in the public notice (the Evenflo application has not been placed in the public docket), a range of 70 to 80 percent of the total figure of potentially noncompliant tether hooks, 742,736, means that between 594,189 and 519,915 child restraints are equipped with the larger, noncompliant tether hooks.

Advocates appreciates the amount of testing that was conducted and the evidence supplied by Evenflo. However, we are concerned about whether purchasers and actual users of child restraints equipped with noncompliant tether hooks are able to properly attach those hooks to vehicle tether anchors without difficulty. Proper attachment and ease-of-use of the noncompliant tether hooks to vehicle tether anchors should be demonstrated by consumers in real world situations, not trained engineers. The engineers are already familiar with the design and performance of the noncompliant tether hooks and they have a technical background not shared by the average person. Engineer testing, therefore, may not accurately reflect problems confronted by untrained consumers when attempting to engage the noncompliant tether hooks. While Advocates does not wish to overstate the issue, the presentation in the agency notice provides no basis on which to conclude that purchasers and users will not encounter difficulties in attaching the noncompliant tether hooks despite the success of the Evenflo engineers.

To resolve this issue, Evenflo should provide information confirming that real-world users of these tether hooks are not having difficulty attaching the tether hooks. Some form of blind test protocol using untrained consumers would be appropriate.<sup>2</sup> Without such evidence for agency consideration, the appropriate action would be notification to purchasers of child restraint models equipped with the noncompliant tether hooks – at least those who filled out and submitted child restraint registration cards – that a noncompliance occurred, and to offer replacement of those child restraints to purchasers who are experiencing difficulty attaching the tether hook to the vehicle anchorage.

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Henry Jasny  
General Counsel

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<sup>2</sup> Advocates does not view the lack of consumer complaints, or even a relatively low rate of consumer complaints, as being necessarily dispositive of whether consumers are having difficulty attaching the noncompliant tether hooks. Consumers may or may not submit complaints for many reasons and, frequently, only go to the effort of filing a complaint when a serious event, such as a crash or injury, has occurred. Lack of complaints cannot be viewed as affirmative evidence that the noncompliant tether hooks can, without difficulty, be properly attached by the average consumer.